

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2008-0323-PR
)	DEPARTMENT B
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
BARRY JAYE WADE,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20060854

Honorable John S. Leonardo, Judge

REVIEW GRANTED; RELIEF DENIED

DiCampli, Elsberry & Hunley, LLC
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Tucson
Attorneys for Petitioner

ECKERSTROM, Presiding Judge.

¶1 In this petition for review, Barry Wade challenges the trial court’s denial of the petition for post-conviction relief he filed pursuant to Rule 32, Ariz. R. Crim. P. We grant

review. However, because we determine the court did not abuse its discretion in denying relief, we also deny relief. *See State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990).

¶2 Pursuant to a plea agreement, Wade pled guilty to one count of sexual abuse of a minor under fifteen years of age, a dangerous crime against children, and one count of child molestation, designated a preparatory dangerous crime against children. After the change-of-plea hearing, Wade’s case was assigned to a different judge, who sentenced him to the presumptive term of five years’ imprisonment for the sexual abuse conviction. The court suspended the imposition of sentence for the molestation conviction and imposed a twenty-year term of probation, to begin upon Wade’s release from incarceration.

¶3 The sentencing judge also denied a motion Wade had filed pursuant to Rule 17.5, Ariz. R. Crim. P., to withdraw from the plea agreement. Wade had argued that he had been unduly pressured by trial counsel to accept the plea, that he had not been fully informed of its terms, and that he should be allowed to withdraw his plea to correct a manifest injustice. Ariz. R. Crim. P. 17.5 & cmt. (in its discretion, trial court “may allow withdrawal of a plea of guilty . . . when necessary to correct a manifest injustice,” which includes denial of effective assistance of counsel).

¶4 In his petition for post-conviction relief, Wade asserted the trial court had erred by denying his motion to withdraw from the plea agreement and raised the same underlying arguments he had raised in that motion before the same judge. The court denied relief, noting in its order that Wade’s petition was “[e]ssentially . . . a renewal” of his earlier

motion. The court incorporated its earlier ruling on the motion and found Wade had failed to show either undue pressure by trial counsel or that his plea had been unknowingly or involuntarily made. Because the court's order clearly identifies the issues and correctly resolves them and because the court's findings and conclusions are supported by the record before us, we see no purpose in rehashing the order here and adopt the court's ruling. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Accordingly, although we grant Wade's petition for review, we deny relief.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

J. WILLIAM BRAMMER, JR., Judge

PHILIP G. ESPINOSA, Judge